

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SUMITOMO CHEMICAL CO. LTD.,  
and VALENT U.S.A. CORPORATION,

Plaintiffs,

v.

SYNGENTA CORP., SYNGENTA SEEDS  
INC., SYNGENTA CROP PROTECTION  
INC., GARST SEED CO. and GOLDEN  
HARVEST SEEDS, INC.,

Defendants.  
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ORDER

08-cv-066-bbc

This is a civil action in which plaintiffs Sumitomo Chemical Co., Ltd. and Valent U.S.A. Corporation contend that defendants Syngenta Corp., Syngenta Seeds, Inc., Syngenta Crop Protection Inc., Garst Seed Co. and Golden Harvest Seeds, Inc. are infringing on plaintiffs' United States Patent No. 5,034,404 (the '404 patent). The case is currently before the court on defendants' unopposed motion to stay all proceedings in this action pending a final resolution by the United States International Trade Commission in the proceedings entitled In the Matter of Certain Pesticides and Products Containing Clothianidin, Inv. No. 337-TA-635. I will grant defendants' motion.

On January 31, 2008, plaintiffs filed a complaint against defendants and two other parties with the International Trade Commission pursuant to Section 337 of the Tariff Act of 1930. The proceedings before the International Trade Commission involve defendants' importation of products that potentially infringe on the '404 patent. On February, 27, 2008, pursuant to 19 U.S.C. § 1337 the International Trade Commission issued defendants a notice of investigation regarding plaintiffs' complaint Inv. No. 337-TA-635.

Defendants request that the civil action currently before this court be stayed until the International Trade Commission proceedings are final. Their request is made in reliance on 28 U.S.C. § 1659(a), which states in pertinent part that:

In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court *shall* stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within— (1) 30 days after the party is named as a respondent in the proceedings before the Commission[.]

(Emphasis added). On February 27, 2008, defendants were named respondents in Inv. No. 337-TA-635, which are proceedings before the United States International Trade Commission. Defendants filed their motion to stay on March 17, 2008, which is within 30 days after they were named as respondents. Whether defendants are infringing plaintiff's '404 patent is at issue in this civil action and in the proceedings before the International

Trade Commission regarding Inv. No. 337-TA-635. Therefore, I must stay all proceedings in the current civil action until the International Trade Commission reaches a final determination in Inv. No. 337-TA-635. Defendants' unopposed motion to stay will be granted. Defendants are required to advise the court on the progress of the International Trade Commission proceedings by June 1, 2008, unless a final determination is reached sooner, in which case defendants should advise the court as soon as the determination is reached.

ORDER

IT IS ORDERED that the motion to stay all proceedings (dkt. #11) filed by defendants Syngenta Corp., Syngenta Seeds, Inc., Syngenta Crop Protection Inc., Garst Seed Co. and Golden Harvest Seeds, Inc. is GRANTED.

Entered this 28th day of March, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge